expressed political views which would indicate that he is not in sympathy with the policies of the People's Action Party. I am not inclined to attach overmuch importance to the differences in recollection as to these conversations expressed in the opposing affidavits. It may well be that relatively casual conversations of such a nature may create in the minds of the parties different impressions of the weight to be given to them.

While I should be most reluctant to accept the position that the fact of a person being a member or not being a member of a particular political party should be held to weigh against his disinterestedness, I appreciate the weight of the consideration that it might not unreasonably be thought to be inappropriate to appoint a Commissioner, who has figured as a protagonist in political controversy, to consider matters with a highly political content. As I have already stated, however, the question for my consideration is not the suitability of the appointment but whether, the appointment having been made, there is a real likelihood of bias on the part of the Commissioner so appointed.

As to the matter of the tender, while it may be that Mr. Elias was guilty of an indiscretion in pursuing inquiries into the fate of his own tender, I am prepared to accept his position that the episode was explained to his satisfaction and left behind no feeling of rancour.

I consider it unnecessary to discuss in further detail the contents of the various affidavits, which have been fully covered in the course of learned counsel's submissions.

Having regard to the bearing on the terms of reference of the Commission of the facts and considerations which have been put before me, I intend no disrespect to the Commissioner when I say that I regard this as a borderline case. The decided cases, however, indicate that courts, naturally enough, are slow to grant orders of prohibition on the head of bias except on the clearest grounds and, while it may be that I regard these highly charged political matters with too detached an eye, I have come to the conclusion that the Commissioner in question, who, I have no doubt, accepted his exacting assignment out of a sense of public duty and who is a person of standing in his profession and the community at large, would not in fact be biassed by the considerations to which I have referred.

Were the writ to lie, therefore, I would hold on the facts that the application should not be granted.

I have already stated that in my opinion the writ of prohibition does not lie. These proceedings, however, may well have served a useful purpose in that they may make easier a personal decision which the Commissioner, now that his legal position has been clarified, may consider himself free to take. Whoever conducts this Commission of Inquiry, which is bound to raise controversial issues, will be faced with an exacting and invidious task. However confident Mr. Elias himself may be in his own powers of detachment, the fact that there is a considerable body of responsible opinion which is distrustful of his impartiality — a consideration which may well not have been in his mind when he accepted the assignment — will not only add enormously to the difficulty of that task but also, when his labours are concluded, may well tend to detract from the authority of his report.

There will be no order as to costs.

Application dismissed.

Solicitors: *Lee & Lee.*

LEONG HAN v. KUPUSAMY

[O.C.J. (Smith J.) March 12, 1959]

[K.L. — Civil Suit No. 360 of 1957]

Practice and Procedure — Judgment by default — Setting aside — Principle in exercising discretion — R.S.C. 1957, O. 27 r. 15.

Order 27 r. 15 gives a completely unfettered discretion to a Court to set aside a judgment by default. No time limits of any kind are prescribed.

Principles laid down by Lord Atkin in *Evans v. Bartlam* applied.

Cases referred to:—

(1) *Manickam v. Tremelbye* (1949) M.L.J. 90.

(2) *In re Helsby* (1894) 1 Q.B. 742.

(3) *Evans v. Bartlam* (1937) A.C. 473.

APPLICATION under O. 27 r. 15.

T. C. Tang for the plaintiff.

N. A. Marjoribanks for the defendant.

Cur. Adv. Vult.

Smith J.: This is an application under O.27 r.15 by the defendant for the Court to exercise its discretion and set aside judgment given for the plaintiff in default of appearance.

The facts of the case are that the plaintiff alleges that he was knocked down by a motor-car driven by the defendant. On 5th October, 1957, the plaintiff commenced proceedings. The defendant was duly served, did not appear and

a certificate of non-appearance was issued. A summons for judgment was issued. The Judge in chambers ordered that the matter be adjourned to Open Court for oral evidence on damages to be taken. On 6th February, 1958, the trial Judge heard evidence regarding damage and reserved his judgment. On 7th February, 1958, the defendant appointed a solicitor and took out a summons for leave to enter an appearance out of time and to defend the action.

The defendant's affidavit discloses a *prima facie* defence and the application has been resisted by the plaintiff on the ground that he has a vested interest in the judgment which cannot now be upset. He relies on the case of *Manickam v. Tremelbye.* [1] That was a case which turned on the interpretation of section 531 of the F.M.S. Civil Procedure Code and laid down the principle that an application for leave to appeal out of time can only be granted if "special circumstances render an extension just." The reason disclosed by the defendant in this case for his failure to take any proceedings is that he considered the suit affected the owner of the car and not himself. The defendant has not been cross-examined on his affidavit and I am therefore obliged to accept it at its face value. I agree that these are not "special circumstances" within the meaning of *Manickam v. Tremelbye,* but I consider that *Manickam v. Tremelbye* which is based on *In re Helsby* [2] has no application to the present case. O.27 r.15 gives a completely unfettered discretion to a Court to set aside a judgment by default. No time limits of any kind are prescribed.

The principles upon which the Court should act under O.27 r.15 appear to me to have been quite clearly laid down by Lord Atkin in *Evans v. Bartlam,* [3] at page 480:—

"The Courts, however, have laid down for themselves rules to guide them in the normal exercise of their discretion. One is that where the judgment was obtained regularly there must be an affidavit of merits, meaning that the applicant must produce to the Court evidence that he has a *prima facie* defence. It was suggested in argument that there is another rule that the applicant must satisfy the Court that there is a reasonable explanation why judgment was allowed to go by default, such as mistake, accident, fraud or the like. I do not think that any such rule exists, though obviously the reason, if any, for allowing judgment and thereafter applying to set it aside is one of the matters to which the Court will have regard in exercising its discretion. If there were a rigid rule that no one could have a default judgment set aside who knew at the time and intended that there should be a judgment signed, the two rules would be deprived of most of their efficacy. The principle obviously is that unless and until the Court has pronounced a judgment upon the merits or by consent, it is to have the power to revoke the expression of its coercive power where that has only been obtained by a failure to follow any of the rules of procedure."

Applying those principles to this present case, since there is no evidence before me which goes to show that the defendant is insincere in his application, I consider that he has disclosed a *prima facie* defence and he has given a reasonable explanation why he took no steps. I therefore give leave to the defendant to appear and defend. Appearance is to be entered forthwith and the time for filing the defence will commence to run from this day. This leave to appear and defend is subject to the condition that the defendant either do deposit in Court within fourteen days from this day the sum of $1,250 as security for the plaintiff's costs of this action or do give security for such sum to the satisfaction of the plaintiff or the Registrar.

Order accordingly.

Solicitors: *T. C. Tang; Lovelace & Hastings.*

ONG CHONG HIN v. REG.

[A. Cr. J. (Rose C.J.) March 11, 1959]

[Singapore — Magistrate's Appeal No. 29 of 1959]

Dangerous Drugs — "Possession" of opium needle — Whether fiddling amounts to possession — Evidence.

In the absence of any evidence that accused was smoking opium the mere fact of his proximity with articles used for smoking opium does not constitute sufficient evidence of possession to justify a conviction.

MAGISTRATE'S APPEAL.

S. H. D. Elias for the appellant.

Peter Lee (Crown Counsel) for the respondent.

Rose C.J.: The appellant was charged with being in possession of certain utensils, to wit an opium needle, an opium lamp and an opium pipe which were to be used in connection with the smoking of prepared opium.

It is common ground that the appellant was neither the owner nor the tenant of the hut in which these articles were found. The appellant's own contention was that he was in the hut for an innocent purpose, namely, to meet and discuss a business matter with his taikong.

Be that as it may — and the learned Magistrate rejected the story — the question to be decided is whether there was sufficient evidence of possession within the meaning of the Dangerous Drugs Ordinance.